In the High Court of Uttaranchal, at Nainital.

F.A.F.O. **No. 1013//2001**
(Old No. 438 of 1986)

The Oriental Fire & Insurance Company Limited Dehradun ..Appellant.

Vs.

Smt. Shanti Devi and two others .. Respondents.

Sri Pankaj Purohit, learned counsel for the appellant.
Sri S.K. Jain learned counsel for the respondents.

Date: 18-8-2004.

Hon'ble P.C. Verma, J.
Hon'ble B.S. Verma, J.

This is an appeal filed by the Oriental Fire and Insurance Company, against the award dated 8-4-1986, made by the Motor Accident Claim Tribunal/Ist Additional District Judge, Dehradun, in M.A.C.T. Case No. 34/1983, by the claim petition was decreed for Rs. 50,000/- only against the appellant, Oriental Insurance Company. However no interest was awarded.

2- The only question on which this appeal is pressed by the learned counsel for the appellant is that the Insurance Company had a limited liability to pay the compensation to the extent of Rs. 50,000/-. According to learned counsel for the appellant the owner of the truck had not been held liable. The deceased Ram Dayal was a labour for loading and unloading of the goods in the Aarat bazaar. On 1.9.1982 at about 8.20 a.m. when deceased Ram Dayal was standing in front of shop of M/s Jaganath Hari Ram, truck no. U.P.N. 5652 came rashly and hit Ram Dayal who died the same day in hospital due to the injuries sustained by him in the accident. The truck was insured for the third party risk to the limited liability of Rs. 50,000/-. Since the award is of Rs. 50,000/- therefore the award amount is within the limited liability as per terms of insurance policy.

3- There is cross objection, filed by the claimants-respondents, which has been treated as cross appeal for enhancement of the compensation awarded to the claimants. The learned counsel

for the claimants-cross appellants drew our attention on the finding recorded by the Motor Accident Claim Tribunal where the tribunal has calculated the compensation amount to the tune of Rs. 1,20,000/-, but it awarded only Rs. 50,000/- on the ground that the negligence of the driver was not proved. The tribunal on the one hand had recorded the finding that the accident took place by this truck by hitting the deceased due to rash and negligent driving of the driver. This fact was proved by the statement of Mishri Lal P.W.2 and accordingly the issue no.1 was decided by the tribunal in affirmative and held that the death of deceased Ram Dayal was occurred due to rash and negligent driving by the driver of the truck in question. Therefore, the tribunal fell in to error in holding that the rash and negligent driving was not proved and thereby wrongly deducted the compensation as determined by the tribunal. Therefore, we allow the cross objection and set aside the finding of the tribunal that the claimants were not entitled to compensation of Rs. 1,20,000/- on the ground that they could not prove the rash and negligent driving. We hold that in view of the finding recorded by the tribunal on issue no.1 that the accident took place on account of rash and negligent driving of the driver, the compensation ought to have been paid as determined by the tribunal per tribunal judgment, which is just compensation amounting to Rs. 1,20,000/-. We further direct that this compensation of Rs. 1,20,000/- will be inclusive of Rs. 50,000/- which was awarded by the tribunal.

4- The tribunal did not pay any interest. We direct that interest @ 9% per annum shall be paid to the claimants from the date of filing of the claim petition till the satisfaction of the award of Rs. 1,20,000/-. The Insurance company shall satisfy the award and shall recover it from the owner and driver by filing an objection and leading evidence in support of the limited liability before the executing court i.e. Motor Accident Claim tribunal concerned. This direction we are issuing in view of the law laid down by the Apex Court in the matter *of New India Assurance Company Ltd. Vs. C.M. Jaya and others; (2002) 2 Supreme Court Cases, 278.*

5- The appeal and cross appeal both are decided accordingly. The Motor Accident Claim Tribunal concerned shall

issue notice to the owner and driver of the vehicle involved in the accident. If any objection is filed by either party they shall be given full opportunity to set up their defence.

(B.S. Verma, J.) **(P.C. Verma, J.)**

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